

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 688 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgement?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MOTI VAVADI GRAM PANCHAYAT

Versus

HARIJAN DOSA RUDA  
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Appearance:

MR SM SHAH for MR SP DAVE for appellant.

MR DAXESH MEHTA for MR DD VYAS for Respondent No. 1

MR HARIN P RAVAL for Respondent No. 2  
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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/12/2000

ORAL JUDGEMENT

This is defendant no.1's First Appeal under Sec.96 of the Code of Civil Procedure, directed against the judgment and decree dated 1st May 1981 passed by the Civil Judge (SD), Gondal in Special Civil Suit No.4/75 whereby the plaintiff's suit was decreed against the appellant-defendant - Moti Vavadi Gram Panchayat, Moti Vavadi, Taluka Dhoraji, Dist. Rajkot, for a sum of Rs.12,364.68ps. with 6% interest per annum from the date of the suit with costs.

2. The plaintiff, i.e. respondent no.1 herein came with the case that he was a contractor and the appellant Moti Vavadi Gram Panchayat had given him a work contract for digging a well within the panchayat area. The respondent no.2 who was defendant no.2 in the suit was the Sarpanch of the Panchayat at the time when the suit was filed and was Up-Sarpanch at the time when the transaction took place. The well was to be dug at 60' and thereafter it was to be dug 20' more and in all, the depth of the well was to be 80'. According to the plaintiff, he was to be paid a sum of Rs.21,161.20ps for the depth of the well upto 80'. It is the case of the plaintiff that he had dug the well upto 79' depth and since it could not be dug beyond the depth of 79', after deducting a sum of Rs.454/- for 1', the plaintiff was entitled to get an amount of Rs.20,707.20ps from the Panchayat for the depth of 79' of this well. His grievance is that the Panchayat had paid him Rs.7,620/only and therefore, he had filed the suit for the rest of the amount and the suit was filed for recovery of a sum of Rs.13,000/-.

3. The suit was contested by Moti Vavadi Gram Panchayat by filing reply Exh.21 and according to the Panchayat, the amount was to be paid as per the rates fixed between the parties and not as per the rate fixed by the Government. It was also the case of the Panchayat that as per the terms dated 12th Oct.1972 and 16th March 1973 which were binding on the plaintiff, the amount was to be paid after the completion of the work as per the certificate of the Taluka Panchayat. The case of the Panchayat was that the plaintiff contractor had done the work of Rs.17,348.15ps. and a sum of Rs.16,410/- had already been paid to the plaintiff as per the records and vouchers of the Panchayat and only an amount of Rs.892.75ps. remained to be paid. The defendant no.2, i.e. respondent no.2 herein denied his liability vide his written statement at Exh.16.

4. On the basis of the pleadings of the parties, the trial Court framed the issues and the main issues were as to whether the plaintiff was entitled to the sum of Rs.20,707.20ps. from the defendants and as to whether the plaintiff had received a sum of Rs.7,620/- only. The trial Court has found against issue no.3 that the plaintiff was entitled to a sum of Rs.19,984.68ps and whereas he had received a sum of Rs.7,620/- only, the plaintiff was entitled to get a sum of Rs.12,364.68ps. It was also held that the defendant no.2, i.e. respondent no.2 herein was not at all liable.

5. I have heard learned Counsel for the appellant Moti Vavadi Gram Panchayat, the respondent no.2 Madhavji Keshavji, Ex-Sarpanch of Moti Vavadi Gram Panchayat and the respondent no.1 original plaintiff contractor. I have also gone through the impugned judgment and the record and proceedings.

6. The documentary evidence which is available on record in the form of vouchers at Exhs.73 to 91 show the payment of Rs.16,410/- to the plaintiff which fully tallies with the account books Exhs.92 and 93. The vouchers at Exhs.73 to 91 which have been prepared by the Secretary of the Panchayat on the back of which there are the thumb impressions of the plaintiff and the thumb impression on these vouchers have been identified by the witnesses Exh.96, 100, and 104 to 106. The Secretary of the Panchayat has been examined at Exh.101. The testimony of these witnesses identifying the thumb impression of the plaintiff on these vouchers cannot be disbelieved and the plaintiff has not been able to shake their testimony in the cross-examination also. Therefore, on the basis of the documentary evidence which has come from the Panchayat and which has been duly proved in the trial, the payment of the sum of Rs.16,410/- is established. The trial Court has held the payment of Rs.7,620/- only to the plaintiff merely because the diaries which came from the side of the plaintiff had shown the entries for payment of Rs.7,620/and therefore, this Court finds that the trial Court has erred in recording this finding as against the documentary evidence which establishes the payment of Rs.16,410/-. Merely because the diaries which were available with the plaintiff recorded the entries for payment of Rs.7,620/- only it cannot be held that only this much amount had been paid when as per the record of the Panchayat vouchers and the account books, the payment of Rs.16,410/- was proved.

7. The final bill and the work completion certificate show that in all, the work for a sum of Rs.19,984.68 ps. had been done. Out of this amount of Rs.19,984.68ps, the plaintiff was not entitled for payment of Rs.2,636.53ps. because as per the work completion certificate and the final bill itself, the work relating to construction of parapet wall and super structure over the wall etc. had not been done by the plaintiff respondent no.1 and therefore according to the appellant, this sum of  $Rs.2,056.60 + 371.81 + 208.12 = 2,636.53ps$  is not the amount to which the plaintiff respondent no.1 is entitled and therefore this amount has

to be deducted from the total amount of the final bill, i.e. Rs.19,984.68ps - Rs.2,636.60ps = Rs.17,348.15ps and whereas a sum of Rs.16,410/- has already been paid to the plaintiff, the plaintiff respondent no.1 remains entitled to get a sum of Rs.938.15ps only. Learned Counsel for the appellant has tried to support its case by arguing that the work which was given to the plaintiff as per the plaintiff himself was only with regard to digging of the well and so far as the parapet and super structure and the top of the well is concerned, the same was never given to the appellant and therefore, he is not entitled to the amount of Rs.2,636.53ps out of the amount of the final bill of Rs.19,984.68ps. On the perusal of the judgment and the pleadings as well as the evidence, it is found that this aspect of the matter was never agitated before the trial Court, the parties have not gone to trial on this aspect of the matter and no issue was struck on this aspect of the matter. As per the issues struck by the trial Court, the finding of the trial Court is that the plaintiff respondent no.1 was entitled to the sum of Rs.19,984.68ps. The Court called upon learned Counsel for the appellant as well as respondent no. 2 to show from any part of the evidence - oral or documentary - which has come on record in the trial Court to evidence the fact that this work relating to parapet and super structure etc. had not been done by the plaintiff respondent no.1 and in this regard, except referring to the plaintiff's averments in the plaint at Exh.1 in para 3 thereof, the appellant and the respondent no.2 have failed to show anything in support of their case that the plaintiff was not entitled to the sum of Rs.2,636.53ps. Therefore, I do not find any material and evidence - oral or documentary - to hold that the plaintiff is not entitled to be paid according to the final bill. Thus, in absence of any positive evidence led on this aspect of the matter and in view of the fact that the parties have not gone to trial on this aspect of the matter, I do not find any basis to deprive the plaintiff from this amount of Rs.2,636.53ps. and hold that the plaintiff respondent no.1 was entitled to be paid in terms of the final bill i.e. Rs.19,984.68ops and whereas a sum of Rs.16,410/- had already been paid to the plaintiff respondent no.1, I hold that the plaintiff respondent no.1 is entitled to a sum of Rs.3,574.68ps as against the admitted case of the appellant herein that the plaintiff respondent no.1 was entitled to Rs.892.75ps only. The appellant as well as the respondent no.2 have also failed to show as to how they have arrived at this figure of Rs.892.75ps? I therefore find that the decree as has been passed by the trial Court deserves to be modified so as to reduce the amount from the sum of Rs.12,364.68ps to that of

Rs.3,574.68ps and therefore this appeal is partly allowed and the decree as has been passed by the trial Court is modified so as to read the sum of Rs.3,574.68ps instead of Rs.12,364.68ps. The part of the decree with regard to the rate of interest and the cost remains intact and in the result, the suit is decreed for a sum of Rs.3,574.68ps with 6% simple interest per annum and the cost. This appeal is therefore allowed in part as above. The record and proceedings shall be sent back to the concerned Court forthwith.

(M.R. Calla, J.)  
Sreeram.